



U.S. Citizenship  
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FILE: [Redacted]  
MSC 04 349 11599

Office: Newark

Date: **APR 28 2008**

IN RE: Applicant: [Redacted]

PETITION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 and May 4, 1988. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel contends that the applicant had established his eligibility for class membership under the CSS/Newman Settlement Agreements. Counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the district director utilized an improper evidentiary standard to evaluate the applicant's supporting documents. Counsel includes copies of previously submitted documentation as well as new documents in support of the applicant's appeal.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

An applicant for temporary residence must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is

appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 13, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Chicago, Illinois from April 1981 to May 1985, [REDACTED] in Paterson, New Jersey from May 1985 to October 1985, and [REDACTED] in Paterson, New Jersey from October 1985 through at least the end of the legalization application period on May 4, 1988. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since January 1, 1982, the applicant indicated that he worked as an "operator" for both "Metal Corp." at an unspecified address in Chicago, Illinois from May 1981 to April 1985 and "Fairfield Textile Corp.," at [REDACTED] in Fairfield, New Jersey from October 1985 through the end of the requisite period on May 4, 1988.

A review of the record reveals that the applicant had previously filed another separate Form I-687 application on June 25, 1993. At part #33 of this Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application was revised as of April 30, 2004) where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Chicago, Illinois from April 1981 to May 1985, [REDACTED] in Paterson, New Jersey from May 1985 to October 1985, and [REDACTED] in Paterson, New Jersey from October 1985 through the end of the period in question on May 4, 1988. At part #36 of the Form I-687 application where applicants were asked to list employment in the United States since first entry, the applicant indicated that he worked as a machine operator for "Metal Corp." at an unspecified address in Chicago, Illinois from May 1981 to April 1985, general help for Unique Furniture on "Railroad" in Paterson, New Jersey from May 1985 to October 1985, floor man for Fairfield Textiles at [REDACTED] in Fairfield, New Jersey from October 1985 to December 1986, and general help for "Grocery Store" at [REDACTED] in Passaic, New Jersey from March 1987 through at least the end of the legalization application period on May 4, 1988.

The fact that the applicant's listing of both his addresses of residence and employment during the requisite period on the Form I-687 application filed on June 25, 1993 did not correspond to the listing of this information on the Form I-687 application submitted on September 14, 2004 seriously undermined the credibility of his claim of residence in the United States since prior to January 1, 1982 as well as his own overall credibility.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. Mr. [REDACTED] stated that he allowed the applicant to live with him at [REDACTED], in Chicago, Illinois from April 1981 to May 1985, and therefore, the applicant did not have any receipts in his name. Mr. [REDACTED] indicated that the applicant worked with metal in an unnamed factory in Chicago, Illinois from May 1981 to April 1985. Although [REDACTED] provided the same street address that the applicant listed as his address of residence on the Form I-687 application filed on June 25, 1993, the applicant did not indicate that he resided in the third floor apartment of this address as [REDACTED] had testified. In addition, [REDACTED] failed to attest to the applicant's residence in the United States after May 1985 through the end of the legalization application on May 4, 1988.

The applicant included an affidavit dated July 12, 1991 that is signed by [REDACTED]. Mr. [REDACTED] provided the applicant's address as of the date the affidavit was executed and stated that he and the applicant worked together for the same company and they had been friends since he began working in the factory. However, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 through the end of the requisite period on May 4, 1988.

The applicant provided an affidavit dated July 18, 1991 that is signed by [REDACTED]. Mr. [REDACTED] listed the applicant's address as of the date of the affidavit and declared that he was the applicant's neighbor at this address in Paterson, New Jersey. Mr. [REDACTED] noted that he had personal knowledge that the applicant worked for [REDACTED] in his grocery store as a general helper from March 1987 to August 1988. While [REDACTED] attested to the applicant's place of employment in that portion of the requisite period after March 1987, he failed to state where the applicant resided from March 1987 to May 4, 1988. In addition, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 up to March 1987.

The applicant submitted an affidavit dated July 15, 1991 that is signed by [REDACTED]. Mr. [REDACTED] provided the applicant's address as of the date his affidavit was executed and stated that he was the applicant's cousin. Mr. [REDACTED] asserted that he had personal knowledge that the applicant worked for [REDACTED] in his grocery store as a general helper from March 1987 to August 1988. Although [REDACTED] attested to the applicant's place of work in that portion of the requisite period after March 1987, he failed to provide testimony relating to the applicant's residence from March 1987 through the end of the legalization application period on May 4, 1988. Further, Mr. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up to March 1987. Moreover, the probative value of [REDACTED]' testimony is limited in that he has admitted that he is member of the applicant's family and must be considered a party with a direct interest in the outcome of these proceedings rather than a disinterested and independent witness.

The applicant included an affidavit dated July 8, 1991 that is signed by [REDACTED]. Mr. [REDACTED] listed the applicant's address as of the date of the affidavit and noted that he had known the applicant in Mexico [REDACTED] contended that he had been a friend of the applicant and his family for a long time and that he and the applicant visited each other. Nevertheless, [REDACTED] failed to

provide any testimony regarding the applicant's residence in the United States during the requisite period.

The applicant provided an affidavit written in Spanish that is signed by [REDACTED]. The affidavit is accompanied by a certified translation as required by 8 C.F.R. § 103.2(b)(3). Mr. [REDACTED] declared that he is the applicant's father and noted that the applicant arrived in Mexico on December 25, 1987 to attend to his pregnant wife. Mr. [REDACTED] stated that the applicant's daughter was born on December 30, 1987 and the applicant subsequently departed to return to the United States on January 26, 1988 in order to return to work and support his family. While [REDACTED] alluded to the applicant living in this country both before and after the dates of his trip to Mexico, he failed to provide any direct and verifiable testimony relating to the applicant's residence in the United States for the period in question. Additionally, [REDACTED] testimony is of limited probative value as he acknowledged that he is the applicant's father and must be considered a party with a direct and substantial interest in the outcome of these proceedings rather than a disinterested and independent witness.

The applicant submitted an affidavit signed by [REDACTED] who asserted that he employed the applicant as a general helper on a part-time basis at his grocery store from March 1987 to August 1988. Although [REDACTED] declared that he knew the applicant had been in the United States since 1981, he failed to disclose the source of such knowledge and failed to provide any specific verifiable information to substantiate the applicant's claim of residence in this country since prior to January 1, 1982 up through March 1987. In addition, [REDACTED] failed to provide either the applicant's address of residence during that period he employed the applicant or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included an affidavit dated November 25, 1991 that is signed by [REDACTED]. Mr. [REDACTED] provided the applicant's address as of the date his affidavit was executed and stated that he had personal knowledge that the applicant traveled to Mexico to get married from December 26, 1986 to February 3, 1987 and then again for an unspecified purpose from December 1987 to February 1988. While [REDACTED] attested to the applicant's two purported absences from this country during the requisite period, he failed to provide relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982 through May 4, 1988.

The applicant provided an affidavit signed by [REDACTED] who noted that he had previously known the applicant in Mexico. Mr. [REDACTED] declared that he had knowledge that the applicant came to the United States in April of 1981 and that he resided at [REDACTED] in Chicago, Illinois from such date May 1985, [REDACTED] in Paterson, New Jersey from May 1985 to October 1985, and an unspecified address on [REDACTED] in Paterson, New Jersey from October 1985 to August 1988. Mr. [REDACTED] asserted that he knew the applicant worked for Metal Corp., in Chicago, Illinois from May 1981 to April 1985, Unique Furniture on "Railroad" in Paterson, New Jersey from May 1985 to October 1985, Fairfield Textiles at [REDACTED] in

Fairfield, New Jersey from October 1985 to December 1986, and "Grocery Store" at ██████████ ██████████ in Passaic, New Jersey from October 1985 to August 1988. Although ██████████ testimony relating to the applicant's places of residence and employment generally matches the applicant's listings of his residences and employment on the Form I-687 application filed on June 25, 1993, he failed to state the source of his extensive knowledge regarding the applicant. Furthermore, ██████████' testimony that the applicant resided on ██████████ in Paterson, New Jersey from May 1985 to October 1985 conflicted with the applicant's testimony on both Form I-687 applications that he resided on ██████████ in Paterson, New Jersey for that same period.

The applicant submitted two separate employment letters containing the letterhead of Fairfield Textiles Corporation in Fairfield, New Jersey that are dated November 4, 1988 and May 4, 1989, respectively. The letter dated November 4, 1988 is signed by ██████████ who listed his position as general manager, while the letter dated May 4, 1989 is signed by ██████████ who listed his position as production manager. Both ██████████ and ██████████ stated that the applicant worked in the finishing department of this enterprise during that portion of the requisite period from October 5, 1985 to December 1986. Nevertheless, both parties failed to provide either the applicant's address of residence during that period he was employed by Fairfield Textiles Corporation or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided photocopies of eight envelopes postmarked June 18, 1984, July 10, 1984, August 1, 1984, November 19, 1984, August 13, 1985, September 6, 1985, January 30, 1986, and September 6, 1986, respectively, that were purportedly mailed by the applicant to his wife in Mexico. The four envelopes postmarked in 1984 listed the applicant's return address as ██████████ ██████████, in Chicago, Illinois and the four envelopes postmarked in 1985 and 1986 listed the applicant's return address as ██████████ in Paterson, New Jersey. While these return addresses match the addresses of residence listed by the applicant up through October 1985 on the Form I-687 application filed on September 14, 2004, the return addresses do not match the addresses of residence listed by the applicant up through October 1985 on the Form I-687 application filed on June 23, 1993. Additionally, it must be noted that the applicant claimed that he moved to ██████████ in Paterson, New Jersey in October 1985 on both of the Form I-687 applications contained in the record. The applicant failed to provide any explanation as to why he would list a different return address on those envelopes he purportedly mailed on January 30, 1986 and September 6, 1986 if he had moved to River Street in Paterson, Jersey in October 1985 as claimed.

In the notice of intent to deny issued on February 21, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by noting that he had failed to submit sufficient evidence to meet his burden of proof in establishing his eligibility to adjust to temporary residence. The applicant was granted thirty days to respond to the notice. The record shows that neither counsel nor the applicant submitted a response to the notice.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687 application in the original legalization application period between May 5, 1987 to May 4, 1988. Consequently, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and denied the application on May 1, 2006.

On appeal, the applicant includes copies of previously submitted documentation as well as new documents in support of his appeal. The applicant provides an affidavit signed by [REDACTED] who states that he had previously known the applicant in Mexico. Mr. [REDACTED] indicates that he had personal knowledge that the applicant came to United States in 1981 because the applicant came to live in Chicago, Illinois, the same city he lived in at that time. Mr. [REDACTED] declares that the applicant moved to New Jersey in 1985 and that he and the applicant kept in contact by telephone and visits. Mr. [REDACTED] notes that the applicant made two trips to Mexico after 1985, the first to get married and the second for the birth of his child.

The applicant submits a new affidavit that is signed by [REDACTED], the same individual who had previously provided an affidavit in support of the applicant's claim of residence. Mr. [REDACTED] declares that he is a personal friend of the applicant and his wife and had known the applicant prior to his entry to the United States in 1981. [REDACTED] asserts that the applicant called him after entering this country to ask for help but that he could not assist the applicant at that time. [REDACTED] contends that the applicant went to work in a factory in Chicago, Illinois and then subsequently moved to the East Coast in the spring of 1985. [REDACTED] states that he has personal knowledge the applicant twice traveled to Mexico to get married and for the birth of his child during the requisite period.

While both [REDACTED] and [REDACTED] attest to the general locale the applicant claimed to have resided during the requisite period, their testimony fails to reference any verifiable and specific information to corroborate the applicant's claim of residence in this country for the period in question.

Counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the district director utilized an improper evidentiary standard to evaluate the applicant's supporting documents. Although the district director failed to enunciate the evidentiary standard utilized to adjudicate the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(b). The affidavits submitted in support of the applicant's claim of residence in the United States for the requisite period lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the requisite period. More importantly, the applicant damaged his own credibility, the credibility of his claim of residence in this country, and the credibility of

documents including the purportedly contemporaneous postmarked envelopes submitted in support of such claim by submitting two separate Form I-687 applications containing conflicting and contradictory testimony relating to his addresses of residence and employment history in the United States since prior to January 1, 1982 through the end of the legalization application period on May 4, 1988.

The absence of sufficiently detailed supporting documentation and the conflicting testimony provided by the applicant himself seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his own conflicting testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.